

Message Text

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PAGE 01 STATE 080129
ORIGIN EB-08

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APPROVED BY EB/IFD/OIA:RDKAUZLARICH
AF/E:RBAKER
TREASURY:RGOODMAN (SUBS)
L/AF:MMATHESON
AF/EP:WHITE (INFO)
L/EB:SBOND (DRAFT)
COMMERCE:JSEVER (INFO)

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FM SECSTATE WASHDC
TO AMEMBASSY NAIROBI
INFO AMEMBASSY LONDON

C O N F I D E N T I A L STATE 080129

E.O. 11652: GDS

TAGS: EINV, KE

SUBJECT:SAUL CLAIM

REFS: (A) NAIROBI 4099; (B) NAIROBI 2100; (C) 76 STATE
220620 (SEPT. 4); (D) 76 NAIROBI 8858 (AUGUST 20)

1. WHILE WE CANNOT AT THIS POINT RESPOND DEFINITELY TO
EMBASSY INQUIRY PARA. 3 REF A, ONE OF OUR CONCERNS IS
THAT LOCAL JUDICIAL PROCEEDINGS MAY INVOLVE CONSIDERABLE
ADDITIONAL EXPENSE AND DELAY. IN VIEW OF THE SUBSTANTIAL
TIME AND EFFORT ALREADY EXPENDED ON THIS CASE, IF A
NEGOTIATED OUTCOME STILL SEEMS POSSIBLE IT WOULD APPEAR TO
BE MORE DESIRABLE, BOTH FOR THE CLAIMANT AND FOR THE USG.

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IT NEED NOT NECESSARILY INVOLVE A JOINT VENTURE OR ANY
CONTINUING ROLE FOR SAUL IN KENYA.

2. GOK RELIANCE ON LOCAL REMEDIES--OVER THE CLAIMANT'S
POSSIBLE OBJECTION--MIGHT REQUIRE THE USG TO TAKE A
POSITION ON THEIR ADEQUACY (OR ON THE FAIRNESS OF THE
ORIGINAL GOK OFFER OF APPROXIMATELY DOLS 250,000, IF THIS

REMAINS OUTSTANDING), AND WE WOULD PREFER TO BE ABLE TO AVOID DOING SO. WHILE WE WOULD NOT LIGHTLY SECOND-GUESS THE JUDICIAL SYSTEM OF ANOTHER COUNTRY OR DENY THE EFFICACY OF LOCAL REMEDIES OSTENSIBLY AVAILABLE, THIS

COULD INVOLVE ANALYSIS OF FACTORS SUCH AS THE PROVISIONS CITED PARA. 4 REF D AND THE INDEPENDENCE OF THE KENYA JUDICIARY. WE WOULD APPRECIATE MORE DETAILED INFORMATION ABOUT THE PROVISIONS APPLICABLE TO THIS CASE, AS WELL AS THE REACTION OF THE CLAIMANT OR HIS REPRESENTATIVE TO PROCEEDING IN THIS MANNER. IT MAY BE THAT SAUL'S RE-ENTRY INTO KENYA WOULD BE NECESSARY FOR THE EFFECTIVE PRESENTATION OF HIS CASE. IF THIS IS LIKELY, WHAT ARE THE CHANCES OF IT BEING PERMITTED?

3. BECAUSE OF THESE CONCERNS, WE BELIEVE IT MAY BE MORE PRODUCTIVE AT PRESENT TO CONTINUE ENCOURAGING A DIALOGUE BETWEEN THE PARTIES AIMED AT ACHIEVING A MUTUALLY-SATISFACTORY OUTCOME, OR PERHAPS AGREEMENT UPON AN INDEPENDENT METHOD OF DISPUTE SETTLEMENT SUCH AS IMPARTIAL ARBITRATION OR VALUATION. WITH RESPECT TO THIS LATTER APPROACH, EMBASSY SHOULD BE AWARE THAT IN 1966 KENYA SIGNED THE CONVENTION FOR THE SETTLEMENT OF INVESTMENT DISPUTES (ICSID, THE ARBITRATION-CONCILIATION AFFILIATE OF THE WORLD BANK), AND IT ENTERED INTO FORCE FOR THAT COUNTRY THE FOLLOWING YEAR. THE U.S. IS ALSO A MEMBER OF ICSID (1966).

4. WE WOULD WELCOME ANY EMBASSY COMMENTS ON THE FORE-CONFIDENTIAL

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GOING, AND AGAIN WANT TO EXPRESS APPRECIATION FOR CONTINUING EMBASSY EFFORTS IN THIS CASE.
VANCE

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Message Attributes

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